

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

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|----------------|---|----------------------------|
| DEBRA RAINES, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CIVIL CASE NO. 22-cv-00266 |
| v. |) | |
| |) | PLAINTIFF'S RESPONSE TO |
| MICHAEL DAVIS, |) | DEFENDANT'S STATEMENT OF |
| |) | CITIZENSHIP |
| Defendant. |) | |
| |) | |
| |) | |
| |) | |

**PLAINTIFF DEBRA RAINES'S RESPONSE TO DEFENDANT'S
STATEMENT OF CITIZENSHIP**

I. Legal Standard

As the Court identified in its Order, the Court must consider several factors in determining a party's citizenship. Scott v. Cricket Commc'ns, LLC, 865 F.3d 189, 195 (4th Cir. 2017); Mecklenburg County v. Time Warner EntertainmentAdvance/Newhouse Partnership, No. 3:05cv333-MR, 2010 WL 391279, at *5 (W.D.N.C. Jan. 26, 2010). Among the factors to be considered are a party's current residence, where they maintain a driver's license, where they own property, and where their vehicles are registered.

II. The Current Record

Defendant's statement of citizenship can be summarized as setting forth the following relevant factors for consideration for Defendant and Defendant's wife as citizens of Virginia: 1. They own a home in Virginia; 2. They get mail in Virginia; 3.

They do not have a North Carolina Driver's License; and 4. They do not have a North Carolina vehicle registration. Doc. 12 ¶¶ 3,10,14, and 15.

Importantly, no attachments or exhibits accompanied Defendant's Statement of Citizenship other than an attachment of a previous deed for the property at issue. The record now contains an additional statement from Defendant but continues to lack actual evidence of Defendant's assertion of his citizenship. Defendant did not mention where they maintained a driver's license or vehicle registration, he simply asserted that it was not in North Carolina. Defendant did not attach any copies of licenses or registration, nor did he attach a deed for the property in Virginia or provide its address.

Plaintiff's proposed Amended Complaint contains an allegation Plaintiff that "upon information and belief, that Defendant and his wife are "citizens and residents of the State of Virginia...." Doc. 8 at 6. Such proposed allegation is predicated upon the Defendant's statements to the Court in his Notice of Removal. Plaintiff included the prefatory statement of "upon information and belief," because of the lack of sufficient evidence in the record to give rise to an unequivocal assertion. Plaintiff's proposed Amended Complaint is not an agreement with Defendant's assertion of citizenship.

CONCLUSION

The Defendant has done nothing other than provide statements for the Court in attempting to prove citizenship. Accordingly, Defendant has failed to meet his burden of proof for citizenship. Plaintiff respectfully requests that the Court

consider the lack of proof of citizenship in the record when determining whether it has proper jurisdiction.

Respectfully submitted the 17th of February, 2023.

MCINTYRE ELDER LAW, PLLC

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CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the PLAINTIFF'S RESPONSE TO DEFENDANT'S STATEMENT OF CITIZENSHIP on all the parties to this cause by: depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each party as follows:

Michael Davis
Defendant
General Delivery
Dublin VA, 24084

This 17th day of February, 2023.

MCINTYRE ELDER LAW, PLLC

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